Minnesota court would refrain from proceeding until the Nebraska suit had been finally settled. Only one other decision squarely in point has been found and that reaches directly the opposite result. *Fisher v. Pacific etc., Ins. Co.* (1916) 112 Miss. 30, 72 So. 846. The argument of the Minnesota court may be summarized in two propositions: (1) if the plaintiff was a citizen of Minnesota she would be entitled to proceed in spite of the Nebraska injunction; (2) if so, a Nebraska citizen must be equally entitled to proceed, otherwise the court would violate Art. 4, Sec. 2 of the federal Constitution,—"the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states." As to the second point: where no question of injunction is involved, it has been held that citizens of other states are entitled, under the constitutional provision in question, to sue in state courts on so-called "transitory" causes of action arising elsewhere, if citizens of the state are so entitled. *Eingartner v. Illinois Steel Co.* (1896) 94 Wis. 70, 68 N. W. 664; *State ex rel. Prall v. District Court* (1914) 126 Minn. 501, 148 N. W. 463. *Contra: Robinson v. Oceanic Steam Nav. Co.* (1889) 112 N. Y. 315, 19 N. E. 625. We may doubt the applicability of this to the case in hand, where a Nebraska citizen is seeking to escape from the courts of her own state. If we accept it as applicable, we are brought to the other point, viz., whether a citizen of Minnesota under circumstances otherwise similar would have been entitled to have the court below proceed with the action. In answering this in the affirmative the court cited no authorities precisely in point. It appeared to them that to allow a Nebraska injunction to have the effect of depriving a Minnesota citizen of his right to go on with a suit in his own state would be to give the courts of another state undue control over Minnesota litigation. All that can be said is that a question of policy of this kind is one upon which views may differ, as is shown by the fact that the Mississippi court in the case cited reached the contrary result.

CONSTITUTIONAL LAW—DUE PROCESS OF LAW—REVOCATION OF LICENSE WITHOUT A HEARING.—The statutes of North Dakota authorized the Dairy Commissioner to issue licenses to creameries and cream stations and to revoke licenses "on evidence" that the licensee had violated or had been "convicted" of violating the dairy laws. They also made it unlawful to misread a certain Babcock test for determining the quality of milk. A dairy inspector reported to the Commissioner that the petitioner had misread the test, whereupon, without notice or a hearing, the Commissioner revoked the petitioner's license. The petitioner requested and obtained a hearing from the State Commissioner of Agriculture who, although without statutory authority to grant or hold a hearing, sustained the Dairy Commissioner's order revoking the license. On a petition for a writ of *certiorari* to review the action of the Dairy Commissioner, *held,* that the writ must be denied. *Cofman v. Osterhous* (1918, N. Dak.) 168 N. W. 826.

See COMMENTS, p. 391.

CONTRACTS—CONSIDERATION—PERFORMANCE OF EXISTING DUTY TO DEFENDANT.—The plaintiff was employed by the defendant by a written contract for one year from a certain date at $90 per week. Three months later a second written contract was made for one year from the same date for the same services at $100 per week. In an action for breach of the second contract the jury was instructed that the contract was valid in case the parties had rescinded the prior contract before executing the second. *Held,* that this was correct and that there

was evidence of a rescission sufficient to justify a verdict for the plaintiff. *Schwartzreich v. Bauman-Basch Inc.* (1918, Sup. Ct. App. T.) 172 N. Y. Supp. 683.

This appears to be an ordinary case where an increase of salary is agreed upon before the end of the contract period. It is highly improbable that at any instant prior to execution of the second contract the defendant could have dismissed the plaintiff without having to pay damages or that the plaintiff was at liberty to refuse to work. The only change in the legal relations of the parties was that the defendant's duty to pay $90 per week was replaced by a duty to pay $100 per week. The court's willingness to permit the jury to indulge in the fiction of a total rescission shows that the plaintiff's counsel conceded too much when he conceded that "a promise by one party to do that which he is already under a legal obligation to perform is insufficient as a consideration." Such has, indeed, been stated to be the rule in *Vanderbilt v. Schreyer* (1883) 91 N. Y. 392 and other New York cases; but if the plaintiff had not himself threatened a breach of contract, a strong argument in his favor could be founded upon *DeCicco v. Schweizer* (1917, N. Y.) 117 N. E. 807. See Corbin, *Does a Pre-existing Duty Defeat Consideration?* (1918) 27 YALE LAW JOURNAL, 362. It is believed that the existing commercial and social *mores* do not justify the defendant in refusing to pay the new salary; and if so, it is certain that the courts will bring the law of consideration into harmony with the *mores,* as the court did in the principal case, by the use of fiction if necessary. The making of the new agreement can always be held to be evidence from which a rescission of the prior contract can be "implied"; the jury will do the rest.

CONTRACTS—IMPOSSIBILITY OF PERFORMANCE—PRECEDENCE OF WAR ORDERS BY GOVERNMENT.—A buyer claimed damages for non-delivery of goods as per contract. The seller replied that it was prevented from delivering by reason of orders for goods given by the United States government for war purposes, these orders having precedence by Act of Congress. The contract contained an express provision as to strikes, accidents, and reasons beyond the seller's control. The government agents expressly demanded precedence for their orders, although this was done in an informal manner. *Held,* that the government order was not voluntarily sought by the seller and that the buyer was not entitled to damages for non-delivery. *Moore & Tierney v. Roxford Knitting Co.* (1918, N. D. N. Y.) 250 Fed. 278.

In a later case on similar facts it was found as a fact that the seller voluntarily sought the government contract and that the government agents had not demanded precedence in accordance with the Act of Congress until after the defendant had had ample time to perform its previous contract. *Held,* that the defendant had no excuse for non-performance. *Mawhinney v. Millbrook Woolen Mills* (1918, N. Y. Sup. Ct.) 172 N. Y. Supp. 461.

See COMMENTS, p. 399.

CONTRACTS—INCREASED EXPENSE DUE TO WAR—STRIKE, ACCIDENT, AND WAR CLAUSE.—In a contract for the manufacture and sale of "chamber acid" generally made from pyrites, it was provided that "war . . . or other uncontrollable causes rendering the sellers unable to deliver shall make this contract inoperative during the continuance of the difficulties." The war broke out later in Europe, and in 1917 the activity of the German submarines made it impossible to obtain a sufficient supply of pyrites. A better acid could be made from brimstone, which was obtainable, but the expense would have been